

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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KEVIN HERMAN LARSON,  
JAMES LEONARD BLACKBURN,  
and JAMES ALOYSIOUS WIESELER,

Plaintiffs,

**ORDER**

Civil File No. 10-4288 (MJD/AJB)

v.

Minnesota Commission of Corrections  
JOAN FABIAN, Attorney General  
LORI SWANSON, Wisconsin Attorney  
General JB VAN HOLLEN, U.S.  
Attorney General ERIC HOLTER,  
DEMOCRATIC PARTY, REPUBLICAN  
PARTY, MINNESOTA BUREAU OF  
CRIMINAL APPREHENSION, numerous  
employees of Federal, State, and local  
Government,

Defendants.

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The above-entitled matter came before the Court upon the Report and Recommendation of Chief United States Magistrate Arthur J. Boylan dated November 30, 2010. [Docket No. 6] Plaintiff Blackburn has filed objections to the Report and Recommendation. Pursuant to statute, the Court has conducted a de novo review of the record, including all transcripts filed and exhibits submitted

to the Court. 28 U.S.C. § 636(b)(1); Local Rule 72.2(b). Based upon that review, the Court **ADOPTS** the Report and Recommendation.

Blackburn stated in his objections that the initial filing fee of \$6.88 he was ordered to pay was too high. He submitted documentation that he did not have the requisite amount in his spending account. However, Judge Boylan correctly found that over the preceding six-months Blackburn's average monthly deposit amount was greater than his average monthly balance. Under 28 U.S.C. § 1915(b)(1), Blackburn must pay twenty percent of the average monthly deposit amount, which according to Blackburn's IFP application was \$34.41 [Docket No. 3]. Twenty percent of this amount is \$6.88.

"If a prisoner determines that his funds are better spent on other items rather than filing a civil rights suit, 'he has demonstrated an implied evaluation of that suit' that the courts should be entitled to honor." Murray v. Dorsal, 150 F.3d 814, 818 (8th Cir. 1998) (quoting Roller v. Gunn, 107 F.3d 227, 233 (4th Cir. 1997)). The record appears to indicate that Blackburn spent the money in his account to make other purchases, leaving him with an insufficient amount to pay his initial filing fee.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

**HEREBY ORDERED** that:

1. The Court **ADOPTS** the Magistrate Judge's Report and Recommendation dated November 30, 2010 [Docket No. 6].
2. Plaintiffs' Applications to Proceed In Forma Pauperis [Docket Nos. 2, 3, 4] are **DENIED**.
3. This action is **DISMISSED WITHOUT PREJUDICE**.

**LET THE JUDGMENT BE ENTERED ACCORDINGLY**

Dated: January 17, 2011

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court